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December 15, 2009

Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: Violations of Federal Law by J.D. Hayworth and Clear Channel
Communications, Inc.

Dear Ms. Duncan:

J.D. Hayworth, a talk show host for radio station KFYI in Phoenix, Arizona, is receiving a corporate in-kind contribution of as much as \$540,000 per week from KFYI and its owner, Clear Channel Communications, Inc. ("Clear Channel"), in order to launch his campaign for U.S. Senate. This is a clear violation of federal law.

Federal law prohibits corporations, such as Clear Channel, from making contributions or expenditures from general treasury funds "in connection with" any federal candidate's election.¹ Commission regulations define "contribution" and "expenditure" to include "anything of value" for the purpose of influencing a federal election.²

Mr. Hayworth and Clear Channel will presumably and inaccurately claim that Mr. Hayworth's repeated appearances on KFYI discussing the 2010 U.S. Senate race fall within the so-called media exemption, which specifically excludes from treatment as a contribution or expenditure "any news story, commentary, or editorial distributed through the facilities of any broadcast station, newspaper, magazine, or other periodical publication."³ But this is incorrect. The media exemption does not apply to commentaries and editorials that are distributed through facilities controlled by a political candidate.⁴

For purposes of federal contribution limits and source prohibitions, Mr. Hayworth is already a U.S. Senate candidate for the 2010 election cycle, even if he has not yet raised or spent \$5,000 to further his election.⁵ An individual

¹ 11 C.F.R. § 114.2.

² 11 C.F.R. § 100.52(a).

³ 11 C.F.R. §§ 100.73, 100.132.

⁴ 11 C.F.R. §§ 100.73, 100.132.

⁵ 11 C.F.R. § 100.3(a). See also Dan Nowicki, *Hayworth Nurses Grudge vs. ex-McCain Aide*, *Arizona Republic*, Oct. 11, 2009,

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who is "testing the waters" may not accept any assistance that is prohibited under federal campaign finance laws, such as corporate in-kind contributions. In other words, when an individual announces that he is considering a run for federal office, he and those who support him must abide by the non-disclosure aspects of federal campaign finance law.⁶ Mr. Hayworth began "testing the waters" as early as April 24, 2009.⁷

As a "testing the waters" candidate, Mr. Hayworth controls all content and messages aired on KFYI during his regular show on weekdays from 4pm to 7pm. The media exemption is therefore inapplicable.

Because the exemption is not applicable, Clear Channel may not broadcast Mr. Hayworth's commentaries that are "coordinated communications" because a prohibited corporate in-kind contribution would result.⁸ Under Commission regulations, a communication is "coordinated" if it meets all parts of a three-pronged test:

1. The communication is paid for by a person other than the Federal candidate or authorized committee in question;
2. One or more of the six conduct standards set forth in 11 CFR 109.21(d) is satisfied ; and

<http://www.azcentral.com/arizonarepublic/news/articles/2009/10/11/20091011nowicki1011.html>

⁶ 11 C.F.R. §§ 100.72, 100.131; Fed. Election Comm'n Adv. Op. 1982-03, 1981-32.

⁷ KFYI, J.D. Hayworth Show, Apr. 24, 2009 (in response to a caller telling him he should run for U.S. Senate, Mr. Hayworth said "Well Mark, I do appreciate it, and I'm going to tell you that I am flattered by it. I am not trying to be coy, but it is a big decision and it is under active consideration."). See e.g., KFYI, J.D. Hayworth Show, May 5, 2009 ("A day doesn't pass where I don't get an email telling me to run for the Senate.... For what it's worth, there have been a few discussions of it at the Hayworth Hacienda, from my most trusted advisor Miss Mary (his wife) , and from others trying to determine when and if I should return to politics or not.... So as we say in broadcasting, 'stay tuned.' "); J.D. Hayworth Show, Dec. 7, 2009 ("As a prospective candidate for public office, I want to make it very clear that I respect John McCain; we just disagree on some important issues. And uh, as I told some other folks the other day, when and if I should choose to run for the U.S. Senate, well I will run for the Senate. I will not be running against John McCain."); J.D. Hayworth Show, Nov. 23, 2009 (Caller: "JD I am going to write in your name on the ballot." JD: There actually was one man elected to the U.S. Senate by write-in vote, Strom Thurmond was elected from South Carolina on a write-in... we will see what happens though, we are actually taking a good look at this thing, so you might actually not have to write me in, but that's a decision we are going to have to make."). Recordings of Mr. Hayworth's show can be found at <http://kfyi.com/pages/podcast-archives.php?pname=jdhayworth.xml>. See also J.D. Hayworth's Fit Trust Website, www.FitTrust.org ("[O]nce a charge is made, it is difficult to get a correction from media outlets - much less political opponents - who will continue to spew false charges if it inflicts the political damage they desire. Expect to see this false charge again in the days ahead.... Are you going to run for office again? That's under active consideration, but I cannot do it without retiring this debt. Imagine the ready-made campaign controversy that would result if the debt remained unpaid. It would obscure the vital issues we need to discuss in 2010.")

⁸ Fed. Election Comm'n Adv. Op. 2005-07 at 3.

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3. One or more of the four content standards set forth in 11 CFR 109.21(c) is satisfied.⁹

Here, Mr. Hayworth's communications obviously meet the first two prongs. His show's airtime is paid for by Clear Channel. And Mr. Hayworth, the candidate, is himself appearing on KFYI during his afternoon radio show, meaning that the conduct prong of the "coordinated communications" test is certainly met.

The third and final prong—the content prong—is also met here because Mr. Hayworth has, on numerous occasions, expressly advocated either his election or his incumbent opponent's defeat.¹⁰ For example, Mr. Hayworth has started using Clear Channel's broadcast facility and website to bolster his standing in online "straw polls."¹¹ Mr. Hayworth also regularly selects and repeats listeners' emails and comments urging his election or advocating the defeat of Senator John McCain.¹² But Mr. Hayworth cannot hide behind others' words when he himself selects the comments and chooses to read them over the air to stoke support for his candidacy. His statements are express advocacy under federal law, and that means his messages delivered on Clear Channel's airwaves are a "coordinated communication" and an illegal corporate in-kind contribution.

⁹ 11 C.F.R. § 109.21.

¹⁰ 11 C.F.R. § 109.21(c)(3).

¹¹ KFYI, J.D. Hayworth Show, Dec. 10, 2009 ("Well let me give you a gentle nudge to a poll you can take at KFYI.com. If you go to kyfi.com you will see a poll from the Arizona Guardian that asks 'JD or McCain'. It says 'JD was part of the Arizona Guardian's home page poll question today.' Cast your vote! ... Oh! This is kind of neat. Just in the time we have mentioned the poll from the AZ Guardian, and you found the link at kyfi.com, guess who is winning that poll? Special thanks for that... If you go to the KFYI website, you will see a poll that asks JD or McCain. And during the span of time that you and I have been talking about this, as we are preparing to leave the air, we are up by a landslide!").

¹² See e.g., KFYI, J.D. Hayworth Show, Oct. 19, 2009 ("Then I got this email from Amy. . . . Amy writes, 'JD, I'm going to be honest with you. Before I started listening to your radio show, I did not like you.... Recently when you seemed to be running against John McCain, my heart took flight. I wondered how many people are like me? Not a fan in the beginning but on board now. I would love for you to be our next Senator. '); KFYI, J.D. Hayworth Show, Nov. 13, 2009 (JD: Hey Justin, who was the weenie of the week? Justin: John McCain. JD: Hey Justin, you are casting a vote for him now, will you be casting a vote for him a year from now? Justin: Will I be casting a vote for him? No."); KFYI, J.D. Hayworth Show, Dec. 10, 2009 (reading an "anonymous email": "...Please run for the Senate, we need more men like you to keep us safe at home. I will serve our nation abroad in its wars to keep our freedom safe. Please serve from within...."). KFYI, J.D. Hayworth Show, Dec. 10, 2009 (reading email from "Paul": "I will vote for you and encourage all of my friends and associates to vote for you. We have had enough of McCain. It is time for a change.") Recordings of Mr. Hayworth's show can be found at <http://kyfi.com/pages/podcast-archives.php?pname=jdhayworth.xml>.

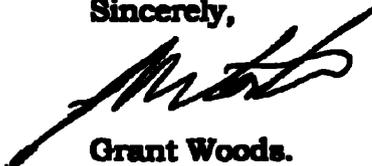
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During the past few weeks, Mr. Hayworth has repeatedly used almost his entire allotted airtime to promote his candidacy.¹³ And Mr. Hayworth has stated his intention to continue to use this corporate subsidy to campaign during the coming months.¹⁴ Clear Channel's subsidy to Mr. Hayworth is significant—as much as \$540,000 per week by some estimates.¹⁵

I hereby request that the Commission immediately hold Clear Channel, KFYI, and Mr. Hayworth accountable for knowingly and willfully making and accepting illegal in-kind corporate contributions.

Sincerely,


Grant Woods.

Sworn and subscribed before me this 15th day of December, 2009.



Notary Public in and for Maricopa County, AZ
My commission expires May 12, 2011



¹³ See, e.g., KFYI, J.D. Hayworth Show, Dec. 10, 2009, Dec. 9, 2009, Nov. 23, 2009, and Nov. 20, 2009. Recordings of Mr. Hayworth's show can be found at <http://kfvi.com/pages/podcast-archives.php?pname=jdhayworth.xml>.

¹⁴ KFYI, J.D. Hayworth Show, Nov. 20, 2009 ("Guest: Last time I looked John McCain had something like 27 million sitting in his little piggy bank, what would it take for a Republican in a Primary in Arizona to undo a guy that is almost a household name? ... What do you think it would take to wage a campaign against a guy (Senator McCain) who ... gets to go on ABC morning news and gets all of that free publicity? Mr. Hayworth: Yeah, but I have KFYI") (emphasis added). Recordings of Mr. Hayworth's show can be found at <http://kfvi.com/pages/podcast-archives.php?pname=jdhayworth.xml>.

¹⁵ Arizona Guardian, *Angel on the Airwaves*, Dec. 14, 2009 (stating that a Clear Channel representative stated to the Arizona Guardian that "a 30 second ad on the radio show costs about \$300" and that by multiplying \$300 "by the length of Hayworth's show (three hours a night) ... it starts adding up. In this case it's about \$540,000 a week of commercial airtime.")

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